

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# 76-1157

To be argued by  
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-  
WILLIAM H. JACKSON,  
Defendant-Appellant.

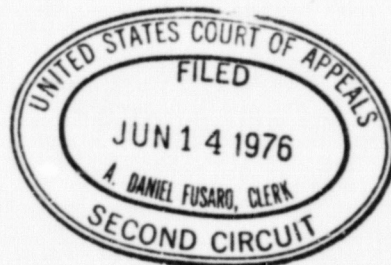
*B  
PDS*  
Docket No. 7-1157

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## APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
WILLIAM H. JACKSON  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

DAVID J. GOTTLIEB,  
Of Counsel.

U.S. District Office	V	defendant	1 Defense	18-1701	2
ARGES		Did obstruct the passage of mail			
KEYS		David Gould			

MAILED  
CASE NO. 7

DATE: 12/12/75

AMT: 1000

Set: 1000

\$

10% Depo

1 Surety B

Collateral

3rd Party

Custody

PSA

Changed (See Docket)

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
<input type="checkbox"/> U.S. Custody <input type="checkbox"/> or <input type="checkbox"/> Begin on Above <input type="checkbox"/> Charges	<input type="checkbox"/> Information <input type="checkbox"/> Waived <input checked="" type="checkbox"/> Superseding <input type="checkbox"/> Indict/Info <b>11-18-75</b>	<b>11/26/75</b> 1st Plea II Final Plea	Trial Set For <b>12/1/75</b> <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty	Trial Date <b>12/2/75</b> Trial Ended Disposition <b>12/12/75</b> <input checked="" type="checkbox"/> Convicted <input type="checkbox"/> Acquitted <input checked="" type="checkbox"/> Dismissed <input type="checkbox"/> Nolo/Discontinued*

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> Dismissed <input type="checkbox"/> Res for District Ct <input type="checkbox"/> Res to Answer to U.S. District Court AT: _____ Magistrate's Initials: _____
Summons	Issued			<input type="checkbox"/> Waived <input type="checkbox"/> Not Waived	<input type="checkbox"/> Intervening <input type="checkbox"/> Indictment	
	Served					
Arrest Warrant						
COMPLAINT				Tape No.	INITIAL/No.	
OFFENSE (In Complaint)						

DATE	PROCEEDINGS	V. Excludable Delay
11-18-75	Superseding Information filed.	
11/26/75	Before BARTELS, J.- Case called- deft and counsel present deft waives reading of information and enters a plea of not guilty- trial set for 12/1/75 at 11:00 A.M.	
12/1/75	Before BARTELS, J.- Case called- No appearance by deft- bench warrant ordered at 2:00 P.M.- bench warrant issued	
12/2/75	Before BARTELS, J.- case called- deft and counsel present bench warrant returned executed- govt's motion to dismiss counts 1 is granted- trial ordered and begun- govt rests- both sides sum up- trial concluded- decision reserved- court orders deft restored to bail	
12/5/75	Post-trial memorandum of law filed	
12/12/75	Before BARTELS, J.- Case called- deft and counsel present court renders a verdict of guilty as charged in count 2 memorandum and order signed- sentence adjd without date bail contd	
12/12/75	By BARTELS, J.- Memorandum and Order filed finding the deft guilty as to count 2	
3-12-76	Before BARTELS, J - case called - deft & atty Marion Seitzer present - deft is sentenced to imprisonment for the purpose of Study and to enable the court to receive a report and then after to take the action permitted under	

ON OCT 1, THE APPLICABLE DOCKET ENTRY IN SECTION IV SHOW, IN SECTION IV, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(a) - "SPEEDY TRIAL ACT".

**BEST COPY AVAILABLE**



DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	T-18, U.S.Code, Sec. 4208(b). Ct. directs that Clerk file a Notice of Appeal. Bail conta pending appeal.				
3-12-76	Judgment & Commitment filed - certified copies to Marshal.				
3-12-76	Notice of Appeal filed (no fee)				
3-12-76	Docket entries and duplicate of Notice mailed to the Court of Appeals.				

A TRUE COPY ATTEST  
 4/8/76  
 EDWARD J. GEL,  
 CLERK  
 U.S. COURT OF APPEALS  
 FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

WILLIAM H. JACKSON,

Defendant.

75 CR 385

SUPERSEDING  
INFORMATION

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

No. \_\_\_\_\_  
(Title 18, U.S.C. §1701)

NOV 18 1975  
X

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

On or about the 1st day of April, 1974, within the Eastern District of New York, the defendant WILLIAM H. JACKSON did knowingly and wilfully obstruct and retard the passage of mail by removing from the mail and opening, without authorization, United States Treasury Check No. 60,535,955, symbol 4001 dated April 1, 1974 in the sum of Two Hundred Forty-four Dollars and Seventy Cents (\$244.70), payable to James Brown, 1012 Castleton Avenue, Staten Island, New York 10310. (Title 18, United States Code, §1701).

COUNT TWO

On or about the 1st day of May, 1974, within the Eastern District of New York, the defendant WILLIAM H. JACKSON did knowingly and wilfully obstruct and retard the passage of mail by removing from the mail and opening, without authorization, United States Treasury Check No. 61,134,440, symbol 4001, dated May 1, 1974, in the sum of Two Hundred Forty-four Dollars and Seventy Cents (\$244.70), payable to James Brown, 1012 Castleton Avenue, Staten Island, New York 10310. (Title 18, United States Code, §1701).

*David L. Tanager*  
UNITED STATES ATTORNEY



FILED  
IN CLERK'S OFFICE  
DISTRICT COURT OF N.Y.

DEC 12 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

-against- :

WILLIAM H. JACKSON, :

Defendant. :

TIME AM.....  
P.M.....

75-CR-865

-----x  
Appearances:

HON. DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
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DAVID S. GOULD, ESQ.  
Assistant U.S. Attorney  
Of Counsel

THE FEDERAL DEFENDER SERVICES UNIT/THE  
LEGAL AID SOCIETY  
Attorneys for Defendant  
26 Court Street, Room 701  
Brooklyn, New York 11242  
MARION SELTZER, ESQ.  
Of Counsel

BARTELS, District Judge

In this non-jury criminal trial the defendant,  
William H. Jackson, is charged with one count of knowingly  
and wilfully obstructing and retarding the passage of mail,  
in violation of 18 U.S.C. §1701, by removing from the mail

and opening, without authorization, an envelope containing a United States Treasury check No. 61,134,440, symbol 4001, dated May 1, 1974, in the sum of \$244.70, payable to James Brown, 1012 Castleton Avenue, Staten Island, New York 10310. After consideration of all the testimony and exhibits, the Court has concluded that the defendant, William H. Jackson, is guilty, beyond a reasonable doubt, of violating 18 U.S.C. §1701 and, in support thereof, hereby makes the following findings of fact and conclusions of law in accordance with Rule 23(c) of the Federal Rules of Criminal Procedure.

#### Findings of Fact

1. Prior to 1971 and until approximately March, 1973, James Brown, age 75, was the recipient of public assistance welfare payments from the City of New York and as such received a welfare payment check twice a month.

2. In 1971 James Brown met the defendant, William H. Jackson, at defendant's restaurant in Staten Island, New York, and thereafter came to live with the Jackson family as their only boarder in their private apartment in a housing project located at 89 Wayne Place, Staten Island, New York. As such, Brown paid the defendant, as his landlord, the sum



of \$25.00 per week as rent.

3. While living at that address, Brown received his welfare checks at a post-office box rented by the Jacksons for their family mail and paid Jackson his rent from the proceeds of those checks.

4. Thereafter, prior to September, 1972, Brown and the Jackson family moved to 1012 Castleton Avenue, Staten Island, New York, where Brown continued as a boarder. At that time the Jackson family mail was delivered directly to the house and Brown arranged to also have his welfare checks mailed to that address.

5. While living with the Jacksons at either address, above mentioned, Brown's procedure for cashing his welfare checks was to have Jackson accompany him to the Staten Island Check Cashing Corp. to cash the check there and to pay Jackson then and there the rent directly from the proceeds of the check.

6. In September, 1972, Brown suffered a heart attack and was hospitalized at Harlem Hospital in Manhattan, where he remained until December 22, 1972.

7. While Brown was hospitalized, Jackson brought him Brown's welfare checks, which had been delivered at the

Jackson home, so that Brown could endorse the same, whereupon Jackson would cash the checks and deliver the money to Brown at the hospital. At the hospital Brown would then pay Jackson the rent from the money received from Jackson. After this procedure became too burdensome for Jackson, he secured a letter signed by both Brown and the welfare office authorizing Jackson to endorse and cash Brown's checks directly, which letter was delivered to the Staten Island Check Cashing Corp. and retained by it. Several checks were cashed under the authority of this letter while Brown remained in the hospital, but the letter was never produced by Jackson at the trial.

8. On December 22, 1972, Brown was released from the Harlem Hospital and returned to the Jackson home in Staten Island by the defendant, where he continued as a paying boarder.

9. Brown was informed in January, 1973, by the City Welfare Department in Staten Island that he would no longer receive public assistance and that his checks would be cut off. Nevertheless, he continued to receive checks from the Welfare Department until approximately March, 1973.



10. After leaving the hospital Brown verbally revoked the authority that he had given Jackson to cash his welfare checks, and Jackson promised to destroy the letter of authorization, which he could not do because the letter was lost by the check cashing service with which it was filed.

11. From the time he left the hospital in December, 1972, until the arrival of his last City welfare check in March, 1973, Brown reverted to the check cashing procedure outlined in paragraph 5, supra.

12. In March, 1973, after receiving his last City welfare check, Brown suddenly and without warning disappeared from the Jackson home, leaving all of his effects and other belongings and without leaving a forwarding address.

13. Beginning in January, 1974, nine months after Brown disappeared from the Jackson home, United States Treasury Supplemental Security Income Payment checks in the amount of \$244.70 were received in Government envelopes addressed to Brown at the Jackson home for approximately five months, each envelope containing a check for \$244.70. These checks were placed in the U.S. Mail in Birmingham, Alabama, and were payable to James Brown, 1012 Castleton Avenue, Staten

Island, New York. Check number 61,134,440, which forms the subject matter of this prosecution, was the fifth such check and was received in May, 1974.

14. Until June 24, 1974, Brown never knew or expected that these checks would be sent to him or that he was entitled to them.

15. Jackson took each of these envelopes addressed to Brown and containing a Treasury check from the mailbox of his home, opened them, signed the names of both Brown and Jackson on the back of the checks, cashed them and deposited their proceeds in his wife's bank account. The sums represented by these checks were eventually spent by Jackson for his own use.

16. Brown never gave Jackson any authority to either open the envelopes or cash the checks.

17. The May Treasury check, number 61,134,440, was cashed at B. Sandler & Co., a liquor store, rather than at the check cashing service where the prior authorization had been on file.

18. Jackson had no authority to open the envelopes addressed to Brown and cash the Treasury checks payable to Brown and he knew that he had no such authority.



Conclusions of Law

(1) Section 1701 of Title 18 of the United States Code provides that "Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be" punished.

(2) The elements of this offense are (a) obstructing or retarding the passage of mail, and (b) knowingly and willfully doing so. United States v. Fleming, 479 F.2d 56 (10th Cir. 1973).

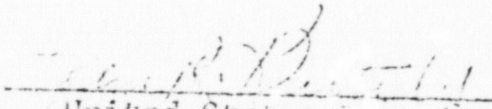
(3) Passage of the mail means the transmission of mail matter from the time of placing it in an official depository to the time of delivery of it to the addressee. United States v. Fleming, supra.

(4) Defendant, William H. Jackson, obstructed and retarded the passage of mail by removing and opening an envelope containing Treasury check number 61,134,440, not addressed to him, and by appropriating the contents for his own use, all without authority from the addressee.

(5) Defendant, William H. Jackson, did so obstruct and retard the passage of mail knowingly and wilfully.

(6) Defendant, William H. Jackson, is guilty, beyond a reasonable doubt, of violating Section 1701 of Title 18 of the United States Code.

Dated: Brooklyn, N.Y.,  
December 12, 1975.

  
United States District Judge



§ 4203. Fixing eligibility for parole at time of sentencing

(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may

(1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the board of parole may determine.

(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) Place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the board of parole a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The board of parole may make such other investigation as it may deem necessary.

It shall be the duty of the various probation officers and government bureaus and agencies to furnish the board of parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

(d) The board of parole having jurisdiction of the parolee may promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners.

Added Pub.L. 85 152, § 3, Aug. 25, 1958, 72 Stat. 545.



CERTIFICATE OF SERVICE

June 14, 1976

I certify that a copy of this brief and appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

David L. Gittel